□ 1333

Mr. HIGGINS of New York changed his vote from ''nay'' to ''yea.''

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the unfinished business is the question on agreeing to the Speaker's approval of the Journal, which the Chair will put de novo.

The question is on the Speaker's approval of the Journal.

Pursuant to clause 1, rule I, the Journal stands approved.

GENERAL LEAVE

Mr. NADLER. Madam Speaker, I ask unanimous consent that Members have 5 legislative days to revise and extend their remarks on H. Res. 798.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 15, 2020.

Hon. NANCY PELOSI,
The Speaker, House of Representatives, Washington, DC.

DEAR MADAM SPEAKER: Pursuant to the permission granted in Clause 2(h) of Rule II of the Rules of the U.S. House of Representatives, the Clerk received the following message from the Secretary of the Senate on January 15, 2020, at 11:18 a.m.:

That the Senate passed S. 2547.

With best wishes, I am,

Sincerely,

CHERYL L. JOHNSON.

RESIGNATION AS MEMBER OF COMMITTEE ON FINANCIAL SERVICES

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Financial Services:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 15, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI: I write to respectfully tender my resignation as a member of the Committee on Financial Services. It has been an honor to serve in this capacity.

Sincerely,

REP. PETER T. KING,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON HOMELAND SECURITY

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Homeland Security:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 15, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI: I write to respectfully tender my resignation as a member of the House Committee on Homeland Security. It has been an honor to serve in this capacity.

Semper Fidelis,

VAN TAYLOR,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON EDUCATION AND LABOR

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Education and Labor:

HOUSE OF REPRESENTATIVES,
Washington, DC, January 15, 2020.

Hon. NANCY PELOSI,
Speaker, House of Representatives, Washington, DC.

DEAR SPEAKER PELOSI: I write to respectfully tender my resignation as a member of the House Committee on Education and Labor. It has been an honor to serve in this capacity.

Semper Fidelis,

VAN TAYLOR,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT

GENERAL LEAVE

Mr. SCOTT of Virginia. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days to revise and extend their remarks and insert extraneous material on H.R. 1230, the Protecting Older Workers Against Discrimination Act.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

The SPEAKER pro tempore. Pursuant to House Resolution 790 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the consideration of the bill, H.R. 1230.

The Chair appoints the gentleman from Texas (Mr. CUELLAR) to preside over the Committee of the Whole.

□ 1339

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (H.R. 1230) to amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes, with Mr. CUELLAR in the chair.

The Clerk read the title of the bill.

The CHAIR. Pursuant to the rule, the bill is considered read for the first time.

General debate shall be confined to the bill and shall not exceed 1 hour equally divided and controlled by the chair and ranking minority member of the Committee on Education and Labor.

The gentleman from Virginia (Mr. SCOTT), and the gentlewoman from North Carolina (Ms. FOXX) each will control 30 minutes.

The Chair recognizes the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I rise today in support of H.R. 1230, the Protecting Older Workers Against Discrimination Act, or POWADA.

I want to thank my colleagues, particularly the gentleman from Wisconsin (Mr. SENSENBRENNER), for working to pass this bipartisan proposal to restore workplace protections for older workers.

In 1967, Congress passed the Age Discrimination in Employment Act, or ADEA, which recognizes the Federal Government's role in preventing older workers from being forced out of jobs or denied work opportunities because of their age.

Importantly, the ADEA was enforced using an evidentiary standard that gave older workers a fair shot at holding employers accountable for age discrimination. Under this standard, workers seeking to challenge age discrimination in employment only had to prove that age was a motivating factor or one of many motivating factors behind an employer's discriminatory action.

For decades, this mixed-motive standard was consistent with the evidentiary standard in title VII of the Civil Rights Act of 1964, which covers claims of unlawful discrimination on the basis of race, sex, national origin, or religion.

Unfortunately, in 2009, in the Gross v. FBL Financial Services case, the Supreme Court upended decades of precedent, significantly raising the burden of proof for older workers.

In its 5-to-4 decision, the Court held that plaintiffs must prove that age was the decisive and determinative motivating factor for the employer's conduct. Under this altered framework, older workers cannot prevail unless they can show that the adverse action would not have occurred but for the employee's age.

This higher threshold not only makes it harder for workers who have suffered

discrimination to achieve redress, it also sends a message to employers that they need not treat age discrimination as seriously as other forms of discrimination.

By amending the ADEA to clarify that the mixed-motive standard is the evidentiary standard for evaluating claims, the Protecting Older Workers Against Discrimination Act would restore workers' protections and reestablish a consistent burden of proof for claims alleging discrimination on the basis of age.

The 2009 Gross decision also opened the door for the courts to apply the but-for standard to other civil rights laws, including the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the antiretaliation provisions of the Civil Rights Act of 1964. The bill before us clarifies that the mixed-motive standard also applies to those three civil rights acts as well.

Despite the bipartisan support in both Chambers for this bill, I am disappointed that the White House has already threatened to veto this legislation. In reality, the administration has a troubling pattern of blocking legislation to help the very forgotten workers it promised to support.

In addition to this legislation, the administration has placed veto threats on the Raise the Wage Act, which would gradually increase the minimum wage to $15 an hour by 2025, and the Workplace Violence Prevention for Healthcare and Social Service Workers Act, which would support the safety of healthcare and social service workers.

□ 1345

Mr. Chairman, today the House has a chance to be on record and stand up for the average American worker. I urge a ''yes'' vote on the Protecting Older Workers Against Discrimination Act, and I reserve the balance of my time.

Ms. FOXX of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today in opposition to H.R. 1230, the Protecting Older Workers Against Discrimination Act.

Let me be clear: every worker, including older workers, should be protected from workplace discrimination at his or her job. This is why Congress has passed a number of laws to protect Americans of all ages against discrimination in the workplace. The Civil Rights Act of 1964, CRA; the Age Discrimination in Employment Act of 1967, ADEA; the Rehabilitation Act of 1973, the Rehab Act; and the Americans with Disabilities Act of 1990, ADA, makes employment discrimination because of an individual's race, color, religion, sex, national origin, age, or disability unlawful.

Although I appreciate the stated purpose behind H.R. 1230, the rushed approach taken by committee Democrats and the lack of evidence and data to prove that this legislation is needed have led to a seriously flawed bill. Careful examination and scrutiny of any legislative proposal is necessary to determine whether it is needed and whether it appropriately and effectively addresses the relevant issues. Unfortunately, in developing H.R. 1230, the committee majority failed miserably in this regard.

Committee Democrats chose not to hold a single hearing solely dedicated to examining either age discrimination or H.R. 1230; rather, they examined this bill during a hearing that covered multiple topics and several other pieces of legislation completely unrelated to the bill.

As we have seen many times during the 116th Congress with other legislation, H.R. 1230 was rushed through the Education and Labor Committee without necessary examination, discussion, or consideration. As a result, we are here debating yet another one-size-fits-all ''government knows best'' mandate that rewards special interests and disregards real-world workplace experience and decades of Supreme Court precedent.

However, the flawed process is far from the only issue with this legislation. The committee also has no evidence or data indicating this bill is necessary. In fact, the lone Democrat-invited witness who testified on H.R. 1230 at a committee hearing covering many bills and topics admitted the impact of the Supreme Court's 2009 decision in Gross v. FBL Financial Services, Inc. is unknown. She also admitted there is no data indicating workers have been discouraged from filing age discrimination charges with the EEOC or bringing cases.

The data simply does not indicate workers have been discouraged from filing discrimination or retaliation charges with the EEOC. Additionally, according to the Bureau of Labor Statistics, employment numbers for older workers have trended upwards in recent decades.

In 2018 older workers earned 7 percent more than the median for all workers, a large increase from 20 years ago. For workers age 65 and older, employment tripled from 1988 to 2018, while employment among younger workers grew by about one-third. Likewise, over the past 20 years, the number of older workers on full-time work schedules grew 2½ times faster than the number working part-time.

Rather than considering misguided proposals such as H.R. 1230 which furthers government intervention, we ought to be empowering all workers, including older workers, to continue participating and thriving in America's workforce to build upon, not stifle, these impressive trends. Unfortunately, H.R. 1230 does the opposite. This legislation will actually harm older workers while simultaneously enriching trial lawyers.

H.R. 1230 overturns Supreme Court precedent by allowing a plaintiff to argue that age was only a motivating, not decisive, factor that led to an employer's unfavorable employment action, and it allows these kinds of mixed-motive claims across four completely different nondiscrimination laws. Moreover, allowing mixed-motive claims in cases alleging retaliation puts employers in an untenable position of trying to prove that a legitimate employment decision was not in response to a prior complaint. The only party who will be paid in nearly all mixed-motive cases is the plaintiffs' attorneys because most employers will be able to demonstrate that they would have taken the same action in the absence of the impermissible motivating factor. So the very people this legislation is intended to help will not receive any monetary damages under H.R. 1230.

H.R. 1230 will also increase frivolous legal claims against businessowners. Such undeserving claims will take valuable resources away from efforts to prevent workplace harassment and discrimination.

Finally, committee Republicans offered amendments to advance important priorities and practical solutions for older workers and highlight fundamental flaws in H.R. 1230. Unfortunately, our commonsense amendments were defeated on a party-line vote in committee.

Mr. Chairman, all workers should be protected from workplace discrimination, but by rushing today's legislation to the House floor in an attempt to make up for an abysmal first year in the majority, Democrats have failed older workers.

I encourage my colleagues to vote ''no'' on H.R. 1230, and I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself such time as I may consume just to respond to the idea that this has been rushed.

There have been several committee hearings over the last 10 years in the House and one of the Senate, and that information is recorded in the committee report.

I also would like to point out that the burden of but for that the Gross decision has saddled older workers with now requires them to show not only that they have been discriminated against but also that they would have gotten the job or wouldn't have been fired but for the fact that they are old. All the older person knows is that when they applied for the job they were told: We don't hire old people.

Well, that is not enough, because now you also have to show that you would have gotten the job anyway. You don't know who got hired, and you don't know what their qualifications were, and it is an almost impossible burden to prove that not only were you discriminated against but you know the action would not have been taken but for that action.

Mr. Chairman, I yield 2 minutes to the gentlewoman from Oregon (Ms. BONAMICI), who is the chair of the Subcommittee on Civil Rights and Human Services on the Education and Labor Committee.

Ms. BONAMICI. Mr. Chairman, I thank Chairman SCOTT for yielding.

Mr. Chairman, today, by supporting the bipartisan Protecting Older Workers Against Discrimination Act, we can protect the civil rights of older workers who are striving to provide for themselves and their families.

According to recent data from the Census Bureau and the Bureau of Labor Statistics, the percentage of retirement-age Americans in the labor force has doubled since 1985. Unfortunately, age discrimination in the workplace remains disturbingly pervasive. According to the AARP, three in five workers over the age of 45 reported seeing or experiencing age discrimination on the job. Americans are living and working longer, and we must do all we can to protect them from discrimination.

My home State of Oregon has one of the most rapidly aging populations in this country. I have heard from workers, many in the technology industry, who believe they have been dismissed or denied employment because of their age. My office has helped older workers who have filed age discrimination complaints at the Equal Employment Opportunity Commission, but the burden and the outcomes are very uncertain.

In 1967 Congress passed the Age Discrimination in Employment Act, or ADEA, to prohibit age discrimination in the workplace and to promote the employment of older workers. Then in 2009 the Supreme Court in the Gross case changed the burden of proof for workers and made it much harder for workers to prove age discrimination. This bipartisan bill simply returns the burden of proof to what it was for decades before the Gross case.

I joined Chairman SCOTT and Congressman SENSENBRENNER in reintroducing the bipartisan Protecting Older Workers Against Discrimination Act to amend the ADEA and our other core civil rights laws: the anti-retaliation provision of Title VII of the Civil Rights Act, the Americans with Disabilities Act, and the Rehabilitation Act of 1973. We need to make our laws clear. Unlawful discrimination in the workplace is unacceptable.

Mr. Chairman, I thank Chairman SCOTT and Congressman SENSENBRENNER for their work on this important issue, and I urge all of my colleagues to support this bill.

Ms. FOXX of North Carolina. Mr. Chair, I yield 2 minutes to the gentleman from Michigan (Mr. WALBERG).

Mr. WALBERG. Mr. Chair, I rise today in opposition to H.R. 1230.

Let's be clear. All of us are against workplace discrimination of any kind, and, Mr. Chairman, at my age I am certainly against age discrimination.

All of us want to protect all American workers from discrimination, but contrary to the bill's title, this legislation will end up harming workers. It is a payout to trial lawyers by muddying legal standards under the guise of a nice-sounding bill. Any plaintiff who files a discrimination lawsuit under this bill is extremely unlikely to receive any monetary awards, but the trial lawyers will still get paid for their time.

Right now we have an economy that is booming. More than 7 million jobs are unfilled across this country—that is 7 million jobs going wanting right now. The pro-growth policies we put in place are working. Our focus should be on protecting workers and encouraging greater workforce participation and not rewarding lawyers through increased opportunities to garner legal fees.

Sadly, this legislation was rushed through the Education and Labor Committee for partisan purposes. It did not receive a thoughtful consideration of bipartisan ideas. We can do better but, once again, we are using precious time to debate political messaging bills instead of solving problems.

Mr. Chairman, protecting our older workers and encouraging appropriate job training are outcomes we can all agree on. But the crux of this bill is designed to help attorneys, not workers.

I urge my colleagues to look beyond the title and vote ''no'' on this payout to trial lawyers. We can do better, and we can protect all workers, including those of age, from age discrimination.

□ 1400

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from Rhode Island (Mr. LANGEVIN), who is the co-chair of the Bipartisan Disabilities Caucus.

Mr. LANGEVIN. Mr. Chair, I thank the gentleman for yielding and for his exceptional leadership in bringing this bill to the floor.

Mr. Chair, I rise in support of Protecting Older Workers Against Discrimination Act.

Age is just a number. We hear that all the time, and there is so much truth to it. Yet, each year, too many Americans over the age of 40 face discrimination at the office. In fact, AARP reports that over half of older workers have seen or experienced age discrimination.

Congress outlawed workplace discrimination against older Americans over 50 years ago in the Age Discrimination in Employment Act. However, due to a misguided 2009 Supreme Court ruling, older Americans still face negative employment actions.

As the U.S. Equal Employment Opportunity Commission acknowledged in 2018, ''Age discrimination remains a significant and costly problem for workers, their families, and our economy.'' This is simply unacceptable, and it is wrong.

Employees over the age of 40 bring talent, experience, and wisdom to an office. Additionally, these workers are more likely to stay at their companies.

On average, Americans between the ages of 55 and 64 stick with their employers three times as long as employees aged 25 to 34. Even more disheartening is the effect age discrimination has on disabled workers.

Mr. Chairman, I include in the RECORD a letter from the Consortium for Citizens with Disabilities in support of the bill.

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
Jan. 15, 2020.

DEAR MEMBER OF CONGRESS: As co-chairs of the Consortium for Citizens with Disabilities (CCD) Rights Task Force, we write to urge you to support passage of H.R. 1230, the Protecting Older Workers Against Discrimination Act. We attach our letter of June 10, 2019 in support of the bill. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, integration, and inclusion of children and adults with disabilities in all aspects of society.

Sincerely,

JENNIFER MATHIS,
Bazelon Center for Mental Health Law.
SAMANTHA CRANE,
Autistic Self-Advocacy Network.
CO-CHAIRS,
CCD Rights Task Force.
HEATHER ANSLEY,
Paralyzed Veterans of America.
KELLY BUCKLAND,
National Council on Independent Living.

CONSORTIUM FOR CITIZENS WITH DISABILITIES,
June 10, 2019.

Hon. BOBBY SCOTT,
Chair, Education and Labor Committee, Washington, DC.
Hon. VIRGINIA FOXX,
Ranking Member, Education and Labor Committee, Washington, DC.

DEAR CHAIRMAN SCOTT AND RANKING MEMBER FOXX: As co-chairs of the Consortium for Citizens with Disabilities (CCD) Rights Task Force, we write to express our strong support for the Protecting Older Workers Against Discrimination Act (POWADA) (H.R. 1230) and the Transformation to Competitive Employment Act (H.R. 873). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, integration, and inclusion of children and adults with disabilities in all aspects of society.

POWADA would correct a Supreme Court decision, Gross v. FBL Financial Services, Inc., that narrowly interpreted the Age Discrimination in Employment Act to require that unlawful discrimination be the ''but-for'' cause of an employer's conduct in order to be actionable. Some courts have also applied this but-for cause requirement to claims of disability-based employment discrimination under the Americans with Disabilities Act (ADA), making it harder for people with disabilities to prevail on workplace discrimination claims.

POWADA is an important opportunity to restore workplace rights for people with disabilities. People with disabilities have the lowest employment rates of any group tracked by the Bureau of Labor Statistics, and their labor force participation rate has consistently been less than half of that of people without disabilities. Attitudinal barriers among employers are among the top reasons for these low rates. It is critically important to address barriers to employment for people with disabilities, and POWADA would help do that.

We also support the Transformation to Competitive Employment Act, which was discussed along with POWADA in your May 21, 2019 hearing on Eliminating Barriers to Employment. This bill would provide incentives to assist providers of subminimum wage employment for people with disabilities to transform the services that they provide to focus instead on competitive integrated employment, and would make grants available to state agencies to collaborate in developing the services needed to support the individuals served by these providers to secure and maintain competitive integrated employment.

The Transformation to Competitive Employment Act represents an important step toward ending the practice of paying subminimum wages to employees with disabilities under Section 14(c) of the Fair Labor Standards Act and expanding the supported employment services needed to ensure that people with disabilities who are served in subminimum wage sheltered workshops to receive the services they need to secure and maintain competitive integrated employment. This bill is another important measure that would bring needed expansion of real employment opportunities for people with disabilities.

We stand ready to work with you to help secure passage of H.R. 1230 and H.R. 873, both of which are important steps to address barriers to full and meaningful employment of people with disabilities.

Sincerely,

JENNIFER MATHIS,
Bazelon Center for Mental Health Law.
SAMANTHA CRANE,
Autistic Self-Advocacy Network.
KELLY BUCKLAND,
National Council on Independent Living.
CO-CHAIRS,
CCD Rights Task Force.
MARK RICHERT,
National Disability Institute.
HEATHER ANSLEY,
Paralyzed Veterans of America.

Mr. LANGEVIN. Mr. Chair, as it outlines, people with disabilities already face significant barriers to competitive, integrated employment, and we cannot allow another barrier to remain in their way.

Mr. Chair, I am proud to vote in favor of strengthening the Age Discrimination in Employment Act, and I thank my good friend, Chairman SCOTT, for championing this effort.

Mr. Chair, I urge my colleagues to join me in restoring justice for American workers and voting in favor of final passage.

Mr. SCOTT of Virginia. Mr. Chair, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. WILD), a distinguished member of the Committee on Education and Labor.

Ms. WILD. Mr. Chair, I thank the gentleman from Virginia for yielding.

Mr. Chair, I rise in support of this bill, the Protecting Older Workers Against Discrimination Act.

Older workers who bring suit for age discrimination are often ostracized at their workplace. They open their lives to invasive probes by defense counsel through written discovery, by deposition, and, ultimately, testifying at a trial.

These probes are often meant to embarrass rather than seek the truth. When our older workers finally reach the courthouse door, it is often almost closed before they even get to the courtroom.

As a former civil litigator, I have brought and defended multiple age discrimination cases. These are very emotional and difficult claims.

No one likes getting older, but when one has to put one's age in full view of all because of perceived discrimination at work, an older worker then has to experience the scrutiny of lawyers, judges, and juries to prove that he or she was discriminated against because of age.

But worse, our older workers are, again, discriminated against when they seek redress from the courts. That is because the Supreme Court, in the 2009 case of Gross v. FBL Financial Services, ruled that an older worker bringing an ADEA claim must prove that age was the ''but for'' cause, the sole determining cause of an adverse employment decision.

That Supreme Court decision sent a message of impunity to employers looking to discriminate on the basis of age, and it set a precedent for denying justice to older workers across our country. That is not the standard used in other discrimination claims.

We must condemn employment discrimination in every form it takes. Yet, our employment laws treat age discrimination claims under the Age Discrimination in Employment Act differently, more harshly, than other employment discrimination claims.

We have an opportunity to restore fairness in our legal system.

The CHAIR. The time of the gentlewoman has expired.

Mr. SCOTT of Virginia. Mr. Chair, I yield an additional 1 minute to the gentlewoman from Pennsylvania.

Ms. WILD. Mr. Chair, H.R. 1230, the Protecting Older Workers Against Discrimination Act, will ensure equal access to justice for those who have suffered age discrimination. It will create uniformity in our laws that a worker need prove only that age discrimination was one of any number of motivating factors for an employer's action.

Older workers like Mr. Gross, the victim of workplace discrimination and a misguided Supreme Court decision, deserve this bill.

Mr. Chair, I urge a ''yes'' vote on this bill.

Ms. FOXX of North Carolina. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, my colleagues on the other side of the aisle contend that the 2009 Supreme Court decision in Gross v. FBL Financial Services has weakened age discrimination protections. They also contend the decision had deterred workers from seeking relief from age bias. Let's look at the data.

In the 9 years preceding the 2009 Supreme Court decision in Gross, the Equal Employment Opportunity Commission, the EEOC, the primary agency that enforces Federal laws that make it illegal to discriminate, received an average of 19,320 charges of discrimination per year relating to age discrimination—19,320.

An EEOC charge is a signed statement asserting employment discrimination. In the 9 years following Gross, the EEOC received an average 20,973 charges per year relating to age discrimination, a slight uptick from the previous 9 years.

There is clearly no evidence workers have been discouraged from filing age discrimination charges with the EEOC since the 2009 Supreme Court decision.

We also found that age discrimination charges as a percentage of all charges filed with the EEOC are approximately the same for the 9 years before and after the Gross decision, 23.2 percent before and 22.8 percent afterward.

Again, this does not indicate workers are discouraged from filing age discrimination charges. Congress should make fact-based decisions. In this case, the facts do not support what H.R. 1230's proponents have asserted.

Mr. Chair, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chair, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), the co-chair of the Democratic Caucus Task Force on Aging and Families.

Ms. SCHAKOWSKY. Mr. Chair, I thank Chairman SCOTT for yielding to me, and I rise in strong support of H.R. 1230, the Protecting Older Workers Against Discrimination Act.

This month, House Democrats are taking historic action to fight for our older Americans across the country. As cofounder and co-chair of the Democratic Caucus Task Force on Aging and Families, I am proud to announce that our Older Americans Bill of Rights, which we will introduce in the coming weeks, already has over 100 cosponsors.

That resolution reflects a covenant with senior citizens and urges the Congress to uphold the dignity of older Americans and their families.

Through that resolution, House Democrats are affirming that seniors have the right to live with dignity and with independence, including the right to high-quality healthcare, the right to age in place, and the right to financial security, including protecting against age discrimination in the workplace.

The bill that we are voting on today signals that we are taking those rights so seriously that we are not just making statements about it, but we are taking bold action. The bill before us ensures that senior citizens who have been victims of age discrimination can have their claims adjudicated fairly without having to jump through all kinds of arbitrary hoops created by a misguided court decision.

Protecting older workers is about more than just adjudicating claims of discrimination. It is about ensuring

older workers have the dignity that they deserve.

Mr. Chair, I urge all of my colleagues to support this measure.

Ms. FOXX of North Carolina. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, older workers are doing quite well in today's modern economy. According to the Bureau of Labor Statistics, BLS, employment for workers age 65 and older tripled from 1988 to 2018, while employment for younger workers grew by a third. The number of employed people age 75 and older nearly quadrupled from 461,000 in 1988 to 1.8 million in 2018.

My colleagues on the other side of the aisle paint a bleak picture of these valued workers standing in the workforce, when, in fact, employment trends for older workers are positive in recent decades.

According to BLS, in 1998, the median weekly earnings of older full-time employees was 77 percent of the median for workers age 16 and up. In 2018, older workers earned 7 percent more than the median for all workers.

The labor force participation rate for older workers has been rising steadily since the late 1990s. Participation rates for younger age groups either declined or flattened over this period.

Over the past 20 years, the number of older workers on full-time work schedules grew 2½ times faster than the number working part time.

As I said, the picture is bright.

Mr. Chair, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chair, I yield 2 minutes to the gentlewoman from Florida (Ms. FRANKEL).

Ms. FRANKEL. Mr. Chair, I thank the gentleman from Virginia and my colleagues for their work on this bill.

Mr. Chair, Ben Franklin signed the Declaration of Independence at age 70. Grandma Moses started painting at age 76. We should never, ever put an age limit on our dreams or the ability to make a living.

But here is the thing, Mr. Chair: You can be a dedicated employee, having spent decades building a career that you are proud of, taking care of your family, putting your kids through college, saving for your future. You need and want to work and, one day, when you are ready, retire with dignity. But then, out of nowhere, your life is shattered. Your bosses say: ''You are fired.''

They list their reasons. However, you know the truth. You have been let go to make way for a younger employee. Now you are without a salary, without your health insurance. You know your odds of getting a new job are slim when you are competing with 20-year-olds and 30-year-olds who are willing to work for lower wages and fewer benefits.

For too many seniors, Mr. Chair, this is a reality.

Nearly three in five workers have experienced age-based discrimination, not only unfairly depriving the worker of a paycheck but taking valuable workers out of the workforce.

Now, a Supreme Court decision has made it even harder to prove age discrimination.

Mr. Chair, the Protecting Older Workers Against Discrimination Act would give senior workers the protection they deserve and society the workers that we need.

The poet Robert Browning said: ''Grow old with me, the best is yet to be.''

Mr. Chair, I urge my colleagues to support this very, very good bill.

Ms. FOXX of North Carolina. Mr. Chair, I yield myself such time as I may consume.

Mr. Chair, I really find it puzzling that our colleagues paint such a dismal picture of employers. We hear this over and over and over again from the other side of the aisle.

As my colleague from Michigan said a little while ago, we have 7 million unfilled jobs in the country right now. Every employer I know, before I came to Congress and since I have been in Congress, cherishes his or her employees. They don't dismiss employees out of hand just because of their age. They just don't do that. They value their employees.

□ 1415

But the other side of the aisle has a real distorted picture of what happens in the private sector.

I want to say that H.R. 1230 doesn't achieve the goals espoused by the bill's sponsors, and let me provide much-needed truth in advertising about this bill.

Under the bill as written, most plaintiffs, even if they are successful, will not be entitled to receive any monetary damages, payments, or reinstatement. Here is why.

Generally, a victim of discrimination is entitled to be made whole, to be put in the position the individual would have been in without the discrimination. This can include monetary damages, back pay, reinstatement, attorney's fees, and court costs.

The Supreme Court, in the 2009 Gross case, eliminated the defense that allows an employer to demonstrate it would have taken the same employment action regardless of age. H.R. 1230 restores this employer defense.

An overwhelming majority of employers will be able to make this demonstration to the court, and when they make that demonstration, under H.R. 1230, the plaintiff will not be entitled to receive any monetary damages, payments, or reinstatement, although the plaintiffs' attorneys will be entitled to fees. So the only party who wins in these cases are the trial lawyers.

In addition, H.R. 1230 is specifically written to allow plaintiffs to survive a summary judgment motion that would end their case. But the plaintiff is in for a surprise later when, after going to court, he or she receives no monetary damages, and the only one getting paid is his or her attorney. To add insult to injury, the employee may have to pay income taxes on the fees that are awarded to his or her attorney.

The bill's sponsors never explain how adding the provisions that include mixed-motive claims and restoring the employer defense allowing employers to demonstrate they would have taken the same action regardless of the impermissible factor, such as age, will benefit employees. In fact, these provisions will only help trial lawyers.

H.R. 1230's title and provisions are yet another case of false advertising and empty promises for older workers.

Mr. Chair, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chair, I yield 2 minutes to the gentlewoman from New York (Ms. STEFANIK), a distinguished member of the Committee on Education and Labor.

Ms. STEFANIK. Mr. Chair, in my district, older Americans are staying in the workforce longer than previous generations, making significant contributions to our growing economy; yet these later years of a worker's career are becoming increasingly unstable.

Over half of the workers over the age of 50 are pushed out of longtime jobs before they are ready to retire.

The consequences of age discrimination are particularly harmful because, once older workers are removed from the workforce, they are more likely to remain unemployed. The economic strain that this can cause for them and their families is significant.

But losing a career is bigger than just financial security. Separating adults from the dignity of work has a broader impact on the well-being of communities like my district, where I serve one of the largest constituencies of older Americans in the entire country.

This bill strengthens the ADEA by reaffirming the pre-2009 standard, simply, that age discrimination cannot be a motivating factor in employment decisions.

I am proud to support H.R. 1230 on behalf of the many constituents of the 21st District who have advocated for this bill for over a decade.

Ms. FOXX of North Carolina. Mr. Chair, I yield myself such time as I may consume.

It is encouraging to see more and more older Americans continue to make invaluable contributions in the workplace, and committee Republicans are committed to eliminating discrimination in the workplace to ensure a productive and competitive workforce.

Unfortunately, H.R. 1230 is an unnecessary and misleading bill that does not ''protect older workers'' and is yet another case of false advertising and empty promises.

Committee Democrats failed to allow a proper examination of H.R. 1230, depriving Members of the opportunity to review the legislation appropriately before it was considered by the committee, and, as a result, we are left

with the ill-advised bill before us today.

This one-size-fits-all, government-knows-best approach is not the answer and will significantly benefit trial lawyers at the cost of older American workers.

I strongly encourage a ''no'' vote on H.R. 1230, and I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Chair, I yield myself the balance of my time.

Mr. Chair, it has been more than a decade since the Supreme Court heightened the burden of proof for workers seeking to legally challenge age discrimination in the workplace; however, our responsibility to ensure that no older Americans are forced out of a job or denied a work opportunity because of age has not changed.

At a time when Americans are working longer into their lives, we need policy solutions that empower older workers to challenge workplace discrimination. We know that a 2018 survey by the AARP showed that three out of five workers age 45 or older had seen or experienced age discrimination in the workplace.

Some of my colleagues contend that this bill was rushed to the floor; however, we must remember that this is a bipartisan proposal that has undergone substantial debate since it was first introduced in 2009. Over the past 10 years, Congress has deliberated on this legislation through four hearings, including two hearings in the Committee on Education and Labor.

Both the House and Senate have introduced and gradually improved this legislation in the 111th, 112th, 113th, 114th, 115th, and the current 116th Congress. It is long overdue.

The Protecting Older Workers Against Discrimination Act is a bipartisan, bicameral solution that restores protections for older workers and ensures that we treat all workers facing discrimination, whether it is on the basis of sex, race, religion, national origin, or age, with consistency and fairness.

I want to thank Congressman SENSENBRENNER for working with us to bring this important legislation to the floor.

I want to remind everyone exactly what this bill does.

Under the bill and before 2009, if a person could prove discrimination, that was the beginning of the case. The defendant would be able to show that they would have been fired or not hired anyway, but that is on the defendant to show. If they don't show that, then it is proven discrimination, entitling the plaintiff to damages. If the defendant can show that it would have done it anyway, discrimination is already proved, and, as the gentlewoman from North Carolina pointed out, attorney's fees would be available.

Under the new law, after 2009, not only do you have to prove that you were discriminated against, told we don't higher old people, you also have to prove that you would have gotten the job anyway.

Well, you don't have that information. You can't show that you would have gotten the job. You don't know the qualifications of the person who was hired.

So, Mr. Chair, we know that this legislation is extremely important. Older workers want this legislation, as evidenced by a letter of support from the Leadership Council of Aging Organizations, over two dozen organizations representing senior citizens; another letter, joined by 26 advocacy organizations supporting the bill; and, finally, a letter of support from AARP.

Mr. Chair, I include these letters in the RECORD.

LEADERSHIP COUNCIL
OF AGING ORGANIZATIONS,
December 9, 2019.

Hon. MITCH MCCONNELL,
Majority Leader,
Hon. CHUCK SCHUMER,
Minority Leader,
U.S. Senate, Washington, DC.
Hon. NANCY PELOSI,
Speaker,
Hon. KEVIN MCCARTHY,
Minority Leader, House of Representatives, Washington, DC.

DEAR MAJORITY LEADER MCCONNELL, MINORITY LEADER SCHUMER, SPEAKER PELOSI, AND MINORITY LEADER MCCARTHY: The Leadership Council of Aging Organizations (LCAO) is a coalition of 69 national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena.

We are writing to urge you to vote for passage of the Protecting Older Workers Against Discrimination Act (S. 485, H.R. 1230). The Protecting Older Workers Against Discrimination Act (POWADA) is bipartisan and bicameral legislation sponsored in the Senate by Senators Bob Casey (D–PA) and Chuck Grassley (R–IA). The House version is sponsored by Representatives Bobby Scott (D–VA) and Jim Sensenbrenner (R–Wl). The House Education and Labor Committee voted on June 11, 2019 to approve POWADA.

Age discrimination is pervasive and stubbornly entrenched. Six in 10 older workers have experienced age discrimination and 90% of them say it is common. It is even more pervasive among older women and African American workers; nearly two thirds of women and three-fourths of African Americans say they have seen or experienced workplace age discrimination.

Courts have not taken age discrimination as seriously as other forms of discrimination and older workers have fewer protections as a result. Ten years ago, in Gross v. FBL Financial Services Inc., the Supreme Court set a higher standard of proof for age discrimination than previously applied and much higher than for other forms of discrimination. Since Gross, court decisions have continued to chip away at protections. As a result, plaintiffs now have to prove that age was a determinative, ''but-for'' cause for their employers' adverse treatment of them. Before the Gross case, it was enough for plaintiffs to prove that age was one of the motivating factors. POWADA would restore the standard of proof in age discrimination cases to the pre-2009 level, and treat age discrimination as just as wrong as other forms of employment discrimination. Moreover, because courts have applied Gross' higher burden of proof to retaliation charges and to disability discrimination, it would also amend the Age Discrimination in Employment Act, Title VII's provision on retaliation, the Americans with Disabilities Act, and the Rehabilitation Act of 1973.

Please vote to restore fairness for older workers by passing the Protecting Older Workers Against Discrimination Act (S. 485, H.R. 1230).

Sincerely,

The Undersigned Groups of the Leadership Council of Aging Organizations:

AARP; AFL–CIO; AFSCME; Aging Life Care Association; Alliance for Retired Americans; American Association of Service Coordinators; American Society on Aging; AMDA—The Society for Post-Acute and Long-Term Care Medicine; Association of Gerontology and Human Development in Historically Black Colleges and Universities; B'nai B'rith; Consumer Voice; International Association for Indigenous Aging; Justice in Aging; Leading Age; National Adult Protective Services Association; National Asian Pacific Center on Aging (NAPCA); National Association for Hispanic Elderly; National Association of Area Agencies on Aging (n4a).

National Association of Nutrition and Aging Services Programs (NANASP); National Association of Social Workers; National Center and Caucus on Black Aging; National Committee to Preserve Social Security and Medicare; National Council on Aging; National Hispanic Council on Aging; National Senior Corps Association; Pension Rights Center; PHI; Social Security Works; The Gerontological Society of America; The Jewish Federations of North America; Women's Institute for a Secure Retirement (WISER).

JUNE 10, 2019.

Hon. BOBBY SCOTT,
Chairman, Committee on Education and Labor, House of Representatives, Washington, DC.
Hon. VIRGINIA FOXX,
Ranking Member, Committee on Education and Labor, House of Representatives, Washington, DC.

DEAR CHAIRMAN SCOTT AND RANKING MEMBER FOXX: On behalf of the undersigned organizations and the millions of workers we represent, we urge all Committee Members to vote to support H.R. 1230, the Protecting Older Workers Against Discrimination Act (POWADA), sponsored by Chairman Scott and Rep. Jim Sensenbrenner (R–WI). POWADA is bipartisan, limited legislation to restore fairness and well-established legal standards on workplace discrimination that were undermined by certain court decisions.

To ensure equal treatment and equal opportunity in employment, the civil rights laws make clear that discrimination in the workplace ''because of'' a protected characteristic or activity is unlawful. For decades, this meant that discrimination may not play any role in employment practices.

Yet, 10 years ago this month, the Supreme Court erected a new and substantial legal barrier in the path of equal opportunity for older workers. In Gross v. FBL Financial Services, Inc. (2009), the Court imposed a much higher burden of proof on workers who allege age discrimination than is required of those who allege discrimination based on race, sex, national origin, or religion. Proving that discrimination tainted the employer's conduct was no longer enough; after Gross, older workers must prove that discrimination played a decisive role in the employer's action.

Since the Gross decision, the Supreme Court and lower courts have extended this same unreasonably difficult burden of proof to other types of civil rights complaints:

Retaliation—In Title VII cases in which an employer retaliates against a worker who challenges workplace discrimination based on race, sex, or other grounds, the worker

must now prove that retaliation was the decisive cause for their adverse treatment. University of Texas Southwestern Medical Center v. Nassar (2013).

Disability discrimination—The Supreme Court has not yet ruled on whether workers subjected to disability discrimination must also meet this much higher standard of causation, but four federal circuit courts of appeal have ruled that disability-based employment discrimination must be established under the higher, ''but-for'' causation standard.

This line of court decisions has made it exponentially more difficult for workers who have experienced discrimination to have their day in court and prove their case. These decisions have also sent a terrible message to employers and the courts that some types of discrimination are not as wrong, or as unlawful, as other forms of discrimination.

POWADA would restore the causation standard that was in effect and consistently applied by the courts before 2009, and make Congress' intent clear that discrimination in the workplace is never acceptable. Please support H.R. 1230 and swiftly pass this bipartisan legislation.

Sincerely,

AARP, American Association of People with Disabilities (AAPD), American Association of University Women (AAUW), American Civil Liberties Union (ACLU), American Federation of State, County, and Municipal Employees (AFSCME), Bazelon Center for Mental Health Law, Disability Rights Education & Defense Fund (DREDF), Easterseals, Equal Rights Advocates, Justice for Migrant Women, Justice in Aging, Leadership Conference on Civil and Human Rights.

National Council on Aging, National Disability Institute, National Domestic Workers Alliance, National Education Association (NEA), National Employment Law Project, National Employment Lawyers Association, National Partnership for Women & Families, National Women's Law Center, NETWORK Lobby for Catholic Social Justice, Paralyzed Veterans of America, The Arc, The Gerontological Society of America, Women Employed, Women's Institute for a Secure Retirement (WISER).

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AARP,
June 10, 2019.

Hon. ROBERT C. SCOTT,
Chairman, Education and Labor Committee, House of Representatives, Washington, DC.

DEAR CHAIRMAN SCOTT: On behalf of AARP's nearly 38 million members, including the approximately 91,000 AARP members in Virginia's Third Congressional District, I extend our sincere thanks for leading efforts to introduce and move the Protecting Older Workers Against Discrimination Act.

Older workers are a valuable asset to their employers and to the nation's economy. Yet, AARP polling shows that over 60% of older workers believe they have seen or experienced age discrimination in the workplace. Discrimination is especially devastating when workers are terminated from long-time jobs, and face entrenched age bias in hiring.

H.R. 1230 will correct the 2009 Supreme Court decision in Gross v. FBL Financial Services, Inc. (and subsequent discrimination cases that followed its reasoning) that made it much more difficult to prove job discrimination, and will clarify that proven discrimination may not play any role in employment decisions. We think the Committee's May hearing helped to highlight the need for POWADA, and thank you for drawing attention to Jack Gross' presence there.

We look forward to the June 11th markup—as you may know, this will be the first time that POWADA has been marked up and voted on in committee—and to working with you and your staff to shepherd this legislation through the House of Representatives before the August recess. Thank you again for your leadership and support.

Sincerely,

NANCY LEAMOND,
Executive Vice President, Chief Advocacy & Engagement Officer.

Mr. SCOTT of Virginia. Mr. Chair, I yield back the balance of my time.

Ms. JOHNSON of Texas. Mr. Chair, today, I rise in support of H.R. 1230, the Protecting Older Workers Against Discrimination Act, which will restore protections for older Americans against age discrimination in the workplace. This legislation will ensure that older workers will once again have the same legal protections against age discrimination as those that exist for discrimination based on race, religion, sex, or national origin.

As the cost of living rises and retirement savings shrink, Americans now more than ever before are faced with the necessity of working later into their lives. It is critical that we, as members of this body, enact protections for older workers because if older workers lose their jobs, they are far more likely to face long-term unemployment. We must guarantee that age discrimination should be treated just as seriously as any other form of workplace discrimination.

This bill amends four laws—the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Rehabilitation Act. It ensures that the higher burden of proof for age discrimination claims are lowered to include mixed-motive claims. This equates to standard practices for workplace discrimination claims based on race, religion, sex, or national origin.

As a member of the House Democratic Caucus Task Force on Aging & Families, I am proud to support our seniors and their families in communities across our country through the Protecting Older Workers Against Discrimination Act.

The CHAIR. All time for general debate has expired.

Pursuant to rule, the bill shall be considered for amendment under the 5-minute rule.

In lieu of the amendment in the nature of a substitute recommended by the Committee on Education and Labor, printed in the bill, an amendment in the nature of a substitute consisting of the text of Rules Committee Print 116–46, shall be considered as adopted.

The bill, as amended, shall be considered as the original bill for the purpose of further amendment under the 5-minute rule and shall be considered as read.

The text of the bill, as amended, is as follows:

H.R. 1230

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protecting Older Workers Against Discrimination Act''.

SEC. 2. STANDARDS OF PROOF.

(a) AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF AGE IN EMPLOYMENT PRACTICES.—Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) is amended by inserting after subsection (f) the following:

''(g)(1) Except as otherwise provided in this Act, an unlawful practice is established under this Act when the complaining party demonstrates that age or an activity protected by subsection (d) was a motivating factor for any practice, even though other factors also motivated the practice.

''(2) In establishing an unlawful practice under this Act, including under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that an unlawful practice occurred under this Act; and

''(B) shall not be required to demonstrate that age or an activity protected by subsection (d) was the sole cause of a practice.''.

(2) REMEDIES.—Section 7 of such Act (29 U.S.C. 626) is amended—

(A) in subsection (b)—

(i) in the first sentence, by striking ''The'' and inserting ''(1) The'';

(ii) in the third sentence, by striking ''Amounts'' and inserting the following:

''(2) Amounts'';

(iii) in the fifth sentence, by striking ''Before'' and inserting the following:

''(4) Before''; and

(iv) by inserting before paragraph (4), as designated by clause (iii) of this subparagraph, the following:

''(3) On a claim in which an individual demonstrates that age was a motivating factor for any employment practice, under section 4(g)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(A) may grant declaratory relief, injunctive relief (except as provided in subparagraph (B)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 4(g)(1); and

''(B) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''; and

(B) in subsection (c)(1), by striking ''Any'' and inserting ''Subject to subsection (b)(3), any''.

(3) DEFINITIONS.—Section 11 of such Act (29 U.S.C. 630) is amended by adding at the end the following:

''(m) The term 'demonstrates' means meets the burdens of production and persuasion.''.

(4) FEDERAL EMPLOYEES.—Section 15 of such Act (29 U.S.C. 633a) is amended by adding at the end the following:

''(h) Sections 4(g) and 7(b)(3) shall apply to mixed motive claims (involving practices described in section 4(g)(1)) under this section.''.

(b) TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF RACE, COLOR, RELIGION, SEX, OR NATIONAL ORIGIN IN EMPLOYMENT PRACTICES.—Section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2) is amended by striking subsection (m) and inserting the following:

''(m) Except as otherwise provided in this title, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin or an activity protected by section 704(a) was a motivating factor for any employment practice, even though other factors also motivated the practice.''.

(2) FEDERAL EMPLOYEES.—Section 717 of such Act (42 U.S.C. 2000e–16) is amended by adding at the end the following:

''(g) Sections 703(m) and 706(g)(2)(B) shall apply to mixed motive cases (involving practices described in section 703(m)) under this section.''.

(c) AMERICANS WITH DISABILITIES ACT OF 1990.—

(1) DEFINITIONS.—Section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) is amended by adding at the end the following:

''(11) DEMONSTRATES.—The term 'demonstrates' means meets the burdens of production and persuasion.''.

(2) CLARIFYING PROHIBITION AGAINST IMPERMISSIBLE CONSIDERATION OF DISABILITY IN EMPLOYMENT PRACTICES.—Section 102 of such Act (42 U.S.C. 12112) is amended by adding at the end the following:

''(e) PROOF.—

''(1) ESTABLISHMENT.—Except as otherwise provided in this Act, a discriminatory practice is established under this Act when the complaining party demonstrates that disability or an activity protected by subsection (a) or (b) of section 503 was a motivating factor for any employment practice, even though other factors also motivated the practice.

''(2) DEMONSTRATION.—In establishing a discriminatory practice under paragraph (1) or by any other method of proof, a complaining party—

''(A) may rely on any type or form of admissible evidence and need only produce evidence sufficient for a reasonable trier of fact to find that a discriminatory practice occurred under this Act; and

''(B) shall not be required to demonstrate that disability or an activity protected by subsection (a) or (b) of section 503 was the sole cause of an employment practice.''.

(3) CERTAIN ANTI-RETALIATION CLAIMS.—Section 503(c) of such Act (42 U.S.C. 12203(c)) is amended—

(A) by striking ''The remedies'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), the remedies''; and

(B) by adding at the end the following:

''(2) CERTAIN ANTI-RETALIATION CLAIMS.—Section 107(c) shall apply to claims under section 102(e)(1) with respect to title I.''.

(4) REMEDIES.—Section 107 of such Act (42 U.S.C. 12117) is amended by adding at the end the following:

''(c) DISCRIMINATORY MOTIVATING FACTOR.—On a claim in which an individual demonstrates that disability was a motivating factor for any employment practice, under section 102(e)(1), and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

''(1) may grant declaratory relief, injunctive relief (except as provided in paragraph (2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 102(e)(1); and

''(2) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment.''.

(d) REHABILITATION ACT OF 1973.—

(1) IN GENERAL.—Sections 501(f), 503(d), and 504(d) of the Rehabilitation Act of 1973 (29 U.S.C. 791(f), 793(d), and 794(d)), are each amended by adding after ''title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.)'' the following: '', including the standards of causation or methods of proof applied under section 102(e) of that Act (42 U.S.C. 12112(e))','.

(2) FEDERAL EMPLOYEES.—The amendment made by paragraph (1) to section 501(f) shall be construed to apply to all employees covered by section 501.

SEC. 3. APPLICATION.

This Act, and the amendments made by this Act, shall apply to all claims pending on or after the date of enactment of this Act.

SEC. 4. SEVERABILITY.

If any provision or portion of a provision of this Act, an amendment or portion of an amendment made by this Act, or the application of any provision or portion thereof or amendment or portion thereof to particular persons or circumstances is held invalid or found to be unconstitutional, the remainder of this Act, the amendments made by this Act, or the application of that provision or portion thereof or amendment or portion thereof to other persons or circumstances shall not be affected.

The CHAIR. No further amendment to the bill, as amended, shall be in order except those printed in House Report 116–377. Each such further amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MR. DESAULNIER

The CHAIR. It is now in order to consider amendment No. 1 printed in House Report 116–377.

Mr. DESAULNIER. Mr. Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end, add the following:

SEC. 5. REPORT BY GOVERNMENT ACCOUNTABILITY OFFICE.

Not later than 2 years after the date of the enactment of this Act, the Government Accountability Office shall submit to the Congress a report analyzing how the Equal Employment Opportunity Commission investigates mixed motive age discrimination claims arising under the Acts amended by this Act, focusing on—

(1) the ability of the Commission to meet the demands of its workload under such Acts;

(2) the plans of the Commission for investigating systemic age discrimination in violation of such Acts;

(3) the plans of the Commission for litigation under such Acts; and

(4) the options for improving the ability of the Commission to respond to allegations of age discrimination in violation of such Acts.

The CHAIR. Pursuant to House Resolution 790, the gentleman from California (Mr. DESAULNIER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California.

Mr. DESAULNIER. Mr. Chair, the American workforce is getting older and working longer than ever before. In fact, by 2024, the Bureau of Labor Statistics estimated that 25 percent of the U.S. workforce will be composed of workers over the age of 55, and a third of those workers will be older than 65.

At the same time, complaints of age discrimination are on the rise. According to enforcement statistics, the EEOC received over 20,000 complaints of age discrimination in 2017, accounting for 23 percent of all discrimination charges filed that year. That is a jump of 4,000 charges of age discrimination since the year 2000 and is likely a severe underestimate, as cases of age discrimination often go unreported.

More so, a 2018 study published by the AARP found that more than 60 percent of workers age 45 and older have seen or experienced age discrimination, and 76 percent say that they consider age discrimination to be a major obstacle to finding a new job.

The Protecting Older Workers Against Discrimination Act would help address this problem by making the burden of proof for age discrimination claims more equitable and more in line with other forms of discrimination.

This has important implications for older workers. Fewer cases could be thrown out or settled before trial, meaning long overdue justice for older Americans. It would also have important implications for the EEOC, ushering in a significant increase to the number of age discrimination claims and, therefore, EEOC's workload.

My amendment goes one step further and ensures that Congress has a full picture of the scope of age discrimination in the American workforce and a better understanding of existing gaps in the EEOC's ability to address and prevent workplace age discrimination. This would allow Congress to better support the EEOC in its work, meaningfully address age discrimination in the American workforce, and empower millions of older Americans.

I would like to thank my colleague, Congressman DAVIS, for his bipartisan partnership, and I urge support for this amendment.

Mr. Chairman, I reserve the balance of my time.

Ms. FOXX of North Carolina. Mr. Chair, I rise in opposition to the amendment.

The CHAIR. The gentlewoman is recognized for 5 minutes.

Ms. FOXX of North Carolina. Mr. Chair, as my colleague from California and my colleague from Illinois know, I respect both of them greatly, and I would have thought that they would have come up with an amendment that would have helped us understand this issue before we pass such a bill instead of after we pass it.

As I understand it, this amendment requires the GAO to report on the Equal Employment Opportunity Commission's ability to investigate and process age discrimination cases after H.R. 1230 unnecessarily reduces the burden of proof in these cases and nullifies decades of Supreme Court precedent.

This amendment is not needed. The EEOC already reports on its workload management and ability to respond to age discrimination charges in the agency's annual budget request and recurring strategic plans. We should not mandate that GAO waste resources on an unnecessary, redundant report.

□ 1430

In addition, assuming this GAO report discovers new information, such information would be useful before the House votes to expand liability in four employment statutes. The new law will be in place, and the horse will have already left the barn by the time we receive the information.

We all agree, American workers should be protected from discrimination in the workplace in every form possible. It is already against the law to discriminate based on a workers' age, as it should be. Congress has enacted separate nondiscrimination statutes, including the Age Discrimination in Employment Act because age discrimination includes issues that are different from other forms of discrimination addressed in other statutes.

Under H.R. 1230, a plaintiff can argue that age was only a motivating, not a decisive factor that led to an employer's unfavorable employment action. Allowing such mixed-motive claims will lead to more frivolous litigation and upset the careful balance Congress enacted in the Age Discrimination in Employment Act.

Unfortunately, H.R. 1230 will not help workers. Under the bill, a plaintiff is very unlikely to receive any monetary damages from a defendant because most employers would be able to show to the Court that they would have taken the same employment action, regardless of the worker's age. The only parties who will win in nearly all cases in H.R. 1230 are trial lawyers.

Disappointingly, Democrats have chosen to further their pro-trial-lawyer agenda by bringing H.R. 1230 up for consideration, a bill falsely advertised as a protection for workers. H.R. 1230 is yet another one-size-fits-all mandate that fails to address the purported problem, ignores real world experiences, and disregards decades of Supreme Court decisions.

This amendment does nothing to address the fundamental flaws in H.R. 1230, is redundant with other government reports, and will not provide the House with timely information. I urge my colleagues to oppose it.

Mr. Chairman, I reserve the balance of my time.

Mr. DESAULNIER. Mr. Chairman, I yield 2 minutes to the gentleman from Illinois (Mr. RODNEY DAVIS), my friend.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I thank my good friend Mr. DESAULNIER from California for yielding. I also thank my good friend Ms. FOXX, the ranking member of the Education and Labor Committee and also Chairman SCOTT for your work on this.

I rise in support of Mr. DESAULNIER's amendment of which I am a cosponsor. This amendment will require the GAO to report on the Equal Employment Opportunity Commission's ability to meet the demands of its workload in terms of the number of cases they receive.

If this important bill is enacted, the EEOC will inevitably be required to review an increasing number of mixed-motive age discrimination claims, which are worthy of review. This amendment is important because to adequately address workplace discrimination that relates to age or any other factor, we must have the resources to address and correct the problem.

Mr. Chairman, I encourage my colleagues to vote ''yes'' on this amendment.

Ms. FOXX of North Carolina. Mr. Chairman, I simply will say again that I think we should vote ''no'' on this amendment. I think it is redundant and unnecessary.

Mr. Chairman, I yield back the balance of my time.

Mr. DESAULNIER. Mr. Chairman, I appreciate the comments by the ranking member, and I hope we will continue our respect and friendship even though we are in disagreement on this.

I urge support of this amendment, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from California (Mr. DESAULNIER).

The amendment was agreed to.

AMENDMENT NO. 2 OFFERED BY MR. RODNEY DAVIS OF ILLINOIS

The CHAIR. It is now in order to consider amendment No. 2 printed in House Report 116–377.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end, add the following:

SEC. 5. STUDY AND REPORT TO CONGRESS.

Not later than 1 year after the date of the enactment of this Act, the Secretary of Labor and the Equal Opportunity Employment Commission shall jointly conduct a study to determine the number of claims pending or filed, in addition to cases closed, by women who may have been adversely impacted by age discrimination as a motivating factor in workplace discrimination or employment termination. The Secretary of Labor and Chairman of the Commission shall jointly submit to the Congress, and make available to the public, a report that contains the results of the study, including recommendations for best practices to prevent and to combat gender and age discrimination as it relates to women in the workplace.

The CHAIR. Pursuant to House Resolution 790, the gentleman from Illinois (Mr. RODNEY DAVIS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

I rise in support of my bipartisan amendment to H.R. 1230, the Protecting Older Workers Against Discrimination Act.

I would like to thank my friends on both sides of the aisle for their cosponsorship of my amendment, including Representatives CHELLIE PINGREE, ELISE STEFANIK, HALEY STEVENS, JENNIFER GONZÁLEZ-COLÓN, MARCY KAPTUR, ABIGAIL SPANBERGER, BETTY MCCOLLUM, MARK DESAULNIER, DAVID TRONE, CHRIS SMITH, PETE STAUBER, WILL HURD, and my colleague from the great State of Illinois, MIKE BOST. I also thank Chairman SCOTT for his support for this amendment.

I was proud to cosponsor this bill, which provides an important fix caused by the 2009 Gross v. FBL Financial Services, Inc. Supreme Court decision. This bill will ensure that older workers can seek the justice they deserve when they face age discrimination in the workplace on a level playing field.

My amendment highlights the discrimination that women face in the workplace based not only on gender but on age, as well.

According to a 2018 report from the EEOC, women, especially older women, but also those at middle age, were subjected to more age discrimination than most older men. In fact, some research suggests that ageism at work begins at age 40 for women, 5 years earlier than men. This is unacceptable, and we must find ways to correct the problem.

This amendment would require the Department of Labor and the Equal Employment Opportunity Commission to conduct a comprehensive study on these age discrimination cases. DOL and the EEOC would then be required to make recommendations for best practices to combat age discrimination of women in the workplace.

The challenges that women face are not partisan issues, and together we can and should, Mr. Chairman, make every effort to address them. Employers should make, and have the right tools to make, conscious efforts to ensure that women have equal rights and opportunities in the workplace regardless of their age.

I encourage my colleagues to support my amendment to protect older adults from age discrimination.

Mr. Chairman, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I claim the time in opposition to the amendment, even though I am not opposed to it.

The CHAIR. Without objection, the gentleman from Virginia is recognized for 5 minutes.

There was no objection.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentlewoman from Maine (Ms. PINGREE), who worked hard with the sponsor of this amendment.

Ms. PINGREE. Mr. Chairman, I thank Mr. SCOTT for yielding and also his leadership on the bill we are considering this afternoon, the Protecting Older Workers Against Discrimination Act.

Maine is the oldest State in the union by median age, and older Mainers are an important part of our workforce. As we experience a tight labor market with low unemployment, it is natural to think that this workforce would have more opportunities available to them, and yet we often hear about constituents who struggle to find and keep work that supports themselves and their families.

When age discrimination is a factor, these workers deserve fair treatment under the law. I am proud to be a cosponsor of the underlying bill and urge my colleagues to vote ''yes.''

I am also proud to offer this important amendment with my colleague, Congressman DAVIS, that addresses the connection between age and gender discrimination. Countless studies have shown that women are hired less and paid less in many fields. Compounded by the real effects of age discrimination, that means older women are disproportionately impacted by bias in the workplace.

The National Bureau of Economic Research backs this up. In a 2015 field experiment, resumes from older women got substantially fewer call backs from employers than those from older men, younger men, and younger women. Our amendment would direct the Department of Labor and the Equal Employment Opportunity Commission to collect data on the disproportionate impact of age discrimination on older women and make recommendations for how to address that impact.

Women are deeply, materially harmed by inequities in our economy. On average, they take home lower salaries, are able to save less for retirement, and receive less in Social Security benefits.

In tandem with age discrimination, all this means that we are leaving older women vulnerable. Addressing this intersection is about economic security, making sure that older women have the chance to work in fair environments for equitable pay.

I ask my colleagues to support this amendment.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, may I inquire how much time I have remaining.

The SPEAKER pro tempore. The gentleman from Illinois has 3 minutes remaining.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I yield as much time as she may consume to the gentlewoman from Puerto Rico (Miss GONZÁLEZ-COLÓN), my good friend.

Miss GONZÁLEZ-COLÓN. Mr. Chairman, I thank Congressman DAVIS for yielding to allow me to speak on this bipartisan amendment. And thank you for allowing me to be a cosponsor of this amendment.

The Age Discrimination in Employment Act of 1967 was signed into law more than 52 years ago. Yet, according to the American Association of Retired Persons, AARP, three in five older workers have seen or experienced age discrimination. Between 1997 and 2018, 423,000 workers filed an age discrimination complaint averaging 20,142 claims per year. This figure is 22 percent of all workplace discrimination claims

Furthermore, AARP reports that 76 percent see age discrimination as a barrier to finding a new job. The Puerto Rico Department of Labor and Human Resources states that there are more than 300,000 women age 35 or older in the labor force on the island. This population represents 28.8 percent of all workers in an economy that has experienced a structured downturn for more than a decade.

This amendment simply requires the labor secretary and the chair of the Equal Employment Opportunity Commission to submit a report determining the number of women who may have been discriminated against because of their age.

As vice chair of the Congressional Caucus for Women's Issues, I am proud to support this measure to assist aging women in the workforce.

Mr. SCOTT of Virginia. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON LEE).

Ms. JACKSON LEE. Mr. Chairman, I thank the gentleman from Virginia for yielding. And I thank the sponsors of this very important amendment, Mr. DAVIS and Ms. PINGREE.

I rise to support the underlying bill, the Protecting Older Workers Against Discrimination Act that I am very proud to have been a cosponsor of.

What kind of thanks are we giving to hardworking Americans who, because of the growth of this population senior citizens, older Americans, they are ready to work in the workforce and provide their experience, their thoughtfulness, and their leadership.

Unfortunately, a Supreme Court decision in the 2000s turned this upside down by requiring those older Americans to be burdened by the responsibility of saying, it is only the fact that we are old or that there are not multiple reasons why I could have been fired. How dangerous that is when an older American feels vulnerable?

The underlying amendment is also very important, dealing with women who may have had to get out of the workforce to raise their children or to not get promotions so they can tend to their children or other matters or be a caretaker for other family members.

This is an important initiative to equalize the playing field, to value those older Americans with experience who are ready to work, who have been giving their best, and who are ready to be the kind of experienced mentors in the workplace that really make America great.

I rise to support this legislation. It is vital to both impact and correct a very bad decision by the United States Supreme Court, and I believe that this will give the kind of affirmation to the value of all Americans, and particularly our older Americans.

Mr. RODNEY DAVIS of Illinois. Mr. Chairman, I urge a ''yes'' vote on this bipartisan amendment, and I yield back the balance of my time.

Mr. SCOTT of Virginia. Mr. Chairman, I yield myself the balance of my time.

I want to thank the gentleman for his amendment and hope it passes.

I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Illinois (Mr. RODNEY DAVIS).

The amendment was agreed to.

AMENDMENT NO. 3 OFFERED BY MR. ALLEN

The CHAIR. It is now in order to consider amendment No. 3 printed in House Report 116–377.

Mr. ALLEN. Mr. Chairman, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Page 8, beginning on line 3, strike ''date of enactment'' and insert ''effective date''.

Add the following at the end:

SEC. 5. EFFECTIVE DATE.

(a) GAO STUDY.—Subject to subsection (b), this Act and the amendments made by this Act shall not take effect until the date the Government Accountability Office reports to the Congress the results of a study such Office carries out to determine whether—

(1) the Supreme Court's decisions in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), and *Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013), have discouraged individuals from filing age discrimination charges and title VII retaliation charges with the Equal Employment Opportunity Commission,

(2) such decisions have discouraged individuals from filing age discrimination cases and title VII cases, and

(3) the success rates of age discrimination cases and title VII cases brought has decreased.

(b) LIMITATION.—If the results of the study carried out under subsection (a) show that individuals have not been discouraged as described in such subsection and that the success rate of cases described in such subsection has not decreased, then this Act and the amendments made by this Act shall not take effect.

The CHAIR. Pursuant to House Resolution 790, the gentleman from Georgia (Mr. ALLEN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

□ 1445

Mr. ALLEN. Mr. Chair, I yield myself such time as I may consume.

When considering any legislation, the House should first determine whether the legislation is needed and, next, whether the bill under consideration will adequately address or improve the situation.

The Committee on Education and Labor, unfortunately, did not have a full hearing on H.R. 1230 and heard from only one witness, invited by the Democrats, about the bill at a general hearing on multiple topics.

This legislation, at the very least, deserved a standalone hearing so that committee members and the House could get more information to make a considered decision regarding this legislation.

Publicly available data does not show the Supreme Court decisions in Gross v. FBL Financial Services or Nassar v. University of Texas Southwestern Medical Center have discouraged individuals from filing discrimination charges with the EEOC, which is the primary agency that enforces Federal laws that make it illegal to discriminate. A discrimination charge is a signed statement asserting employment discrimination.

The lone Democrat-invited witness who testified in favor of H.R. 1230 at the Committee on Education and Labor's hearing in May, which covered

several topics and bills, acknowledged that it is difficult to quantify the impact that the Gross decision has had on the number of older workers who bring cases and the number of those who win them.

This witness also acknowledged that when we might have expected a drop in charges due to Gross-inspired discouragement from employment attorneys, there was a sizeable jump in the number of ADEA charges filed at EEOC.

EEOC data shows that the rate of EEOC age discrimination charges as a percentage of all charges filed is approximately the same for the 9 years before and after the Gross decision.

There has been a slight uptick in Title VII of the Civil Rights Act retaliation charges as a percentage of all charges filed in the 4 years following the Nassar decision, which does not indicate individuals have been discouraged from filing these charges.

Court decisions show that the plaintiffs have continued to win age discrimination and Title VII retaliation cases in the wake of the Supreme Court's decisions in Gross and Nassar.

This amendment will provide Congress much-needed data on the impact of the two Supreme Court cases at issue in H.R. 1230.

If the GAO report indicates Gross and Nassar have not discouraged individuals from seeking relief or from achieving it, the bill would not go into effect.

The House should look before it leaps, and Members should vote in favor of this amendment to ensure this happens.

Mr. Chair, I reserve the balance of my time.

Mr. LEVIN of Michigan. Mr. Chairman, I rise in opposition to the amendment.

The CHAIR. The gentleman is recognized for 5 minutes.

Mr. LEVIN of Michigan. Mr. Chairman, I rise today to speak in opposition to Mr. ALLEN's amendment to delay the effects of this bill.

We do not need a study to tell us that a substantially higher burden of proof for some forms of discrimination makes it far more difficult for workers to get their day in court and to prevail. People may be winning cases, but they are not going to court in the first place in huge numbers.

When cases become materially more difficult to win, attorneys become much less willing and able to represent workers in those cases.

We have already had a 10-year delay in restoring justice. No more delays are necessary or warranted.

Age discrimination in the workplace is disturbingly pervasive. According to an AARP study released last year, three in five older workers report that they have seen or experienced age discrimination on the job. That is 60 percent.

Nearly two-thirds of women and more than three-fourths of African American workers age 45 and older say they have seen or experienced age discrimination in the workplace. Three-fourths of workers age 45 and older blame age discrimination for their own lack of confidence in finding a job.

Mr. Chairman, I ran the workforce system in the State of Michigan for 4 years. Over and over again, I met workers who had lost their jobs because of age discrimination. Most of them weren't even contemplating taking legal action. They were just seeking help to find a new job.

I remember a gentleman from Bay City in Michigan who had been in college years earlier when his dad died of a heart attack suddenly. His mom said to him: ''Sorry, son. You know everybody has to help keep the family afloat.'' So he dropped out of college, and he went to work in retail.

I met him 30 years later. He had been a manager at a sporting goods store, and the corporation looked at him and said: ''We can get somebody way younger than that to run this store for half the money,'' and they fired him.

Thankfully, we had the No Worker Left Behind program in the State of Michigan, and he was able to go back and finish his bachelor's degree. But he wasn't even contemplating taking legal action under this statute.

I ran into those cases over and over, Mr. Chairman.

The enactment of the Age Discrimination in Employment Act, or ADEA, in 1967 was an important part of Congress' work to define and protect civil rights in the 1960s. Over the years, the courts have failed to interpret the ADEA as a civil rights statute and, instead, have narrowly interpreted these protections and broadly construed the statute's exceptions, compounding the barriers facing older workers.

The Protecting Older Workers Against Discrimination Act is a bipartisan proposal that realigns the legal standard for proving age discrimination, to simplify the requirement so employees have a genuine mechanism to fight back under the law, just like with the standards for proving discrimination based on sex, race, or national origin. It is that simple.

This amendment is designed to keep this bill from going into effect indefinitely. There is no deadline for GAO to conduct the study this amendment requires and report back to Congress. It is a delay tactic when we already have mountains of evidence telling us that older workers are facing discrimination at work. They need protection now.

Finally, this Congress has been holding hearings on this issue for years. We have had four hearings over the last 9 years. It is time to act.

Mr. Chair, I urge my colleagues to join me in opposing this amendment, and I reserve the balance of my time.

Mr. ALLEN. Mr. Chairman, again I repeat, the lone witness, a Democratic witness at the Committee of Education and Labor's hearing in May on H.R. 1230, acknowledged that it is difficult to quantify the impact that the Gross decision had on the number of older workers who bring cases and the numbers of those who win them.

This witness also acknowledged that we might have expected a drop in charges due to the Gross-inspired discouragement from employment attorneys, but that there was a sizeable jump in ADEA charges filed with the EEOC.

I merely present this amendment to make sure that the committee and this House look at the data before we have some law here that is going to create, really, fewer opportunities for people to file these charges.

Mr. Chair, I urge a ''yes'' vote on my amendment, and I yield back the balance of my time.

Mr. LEVIN of Michigan. Mr. Chairman, I remind everybody that this is a bipartisan proposal, and it has undergone substantial debate since it was first introduced over a decade ago.

Over the past 10 years, Congress has deliberated on this bill through four legislative hearings, including two hearings in the Education and Labor Committee. Both the House and the Senate have introduced and gradually improved this legislation in the 111th, 112th, 113th, 114th, 115th, and now the 116th Congress. It is long overdue that we take action.

Mr. Chair, I urge all colleagues to oppose this amendment, and I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Georgia (Mr. ALLEN).

The question was taken; and the Chair announced that the noes appeared to have it.

Mr. ALLEN. Mr. Chair, I demand a recorded vote.

The CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Georgia will be postponed.

AMENDMENT NO. 4 OFFERED BY MR. BROWN OF MARYLAND

The CHAIR. It is now in order to consider amendment No. 4 printed in House Report 116–377.

Mr. BROWN of Maryland. Mr. Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end, add the following:

SEC. 5. REPORTS.

For the 5-year period beginning on the date of the enactment of this Act, the Chairman of Equal Employment Opportunity Commission shall submit to the Committee on Education and Labor of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report at 1-year intervals on the number of age discrimination in employment claims brought under this Act with the Equal Employment Opportunity Commission in the period for which such report is submitted.

The CHAIR. Pursuant to House Resolution 790, the gentleman from Maryland (Mr. BROWN) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Maryland.

Mr. BROWN of Maryland. Mr. Chair, I yield myself as much time as I may consume.

I would like first to recognize the leadership of Chairman BOBBY SCOTT, my Potomac partner from Virginia, chairman of the Committee on Education and Labor, and the hard work and the bipartisan work done in that committee to bring this important bill to the floor.

Mr. Chair, older workers are critical to our economy and workplaces. However, 6 in 10 older Americans report seeing or experiencing age discrimination on the job. More than half of older workers are fired from their jobs before they retire. If they find a new job, 9 in 10 never match their prior earnings.

A 2009 Supreme Court decision created a higher burden of proof for workers claiming age discrimination than any other form of discrimination.

Enforcement statistics from the Equal Employment Opportunity Commission show the number of age discrimination complaints has been rising.

In the year 2000, the EEOC received roughly 16,000 age discrimination complaints. That number climbed to over 20,000 complaints in 2017, or 23 percent of all discrimination claims filed.

Mr. Chairman, my amendment would require the EEOC to submit an annual report to Congress on the number of age discrimination claims under this act.

It is important that Congress receives this information in a timely and transparent way to ensure our older workers are being properly protected and heard.

Discrimination is discrimination, whether it is age, race, gender, faith, gender identity, or sexual orientation, and all should be treated fairly under the law.

My amendment and the underlying bill are commonsense pieces of legislation that would restore fairness for all workers.

Mr. Chair, I strongly encourage my colleagues to support my amendment and the underlying proposed legislation.

Mr. Chairman, I yield back the balance of my time.

Ms. FOXX of North Carolina. Mr. Chair, I rise in opposition to the amendment.

The CHAIR. The gentlewoman is recognized for 5 minutes.

Ms. FOXX of North Carolina. Mr. Chair, as I understand it, this amendment requires the Chair of the EEOC, the primary agency that enforces Federal laws that make it illegal to discriminate, to submit five annual reports to congressional committees on the number of age discrimination claims brought to the EEOC under this act.

These reports will come after H.R. 1230 unnecessarily reduces the burden of proof in these cases and nullifies decades of Supreme Court precedent.

Before discussing my concerns with this amendment, I admit I am puzzled that it requires a study on how this legislation will affect future age discrimination claims when evidence is sorely lacking that there is a need for H.R. 1230 in the first place.

The lone witness who testified on H.R. 1230 before the Committee on Education and Labor acknowledged that EEOC data has not shown workers are discouraged from filing age discrimination charges with the EEOC following the Supreme Court's 2009 decision in Gross v. FBL Financial Services.

□ 1500

This witness testified that: ''It is difficult to quantify the impact that the Gross decision has had on the number of older workers who bring cases and the number of those who win them.''

More information on whether H.R. 1230 is needed would have been useful, but Democrats were unable to provide it.

With respect to this amendment, I have concerns about the feasibility of the mandated reports. The amendment requires the EEOC to report each year for 5 years on charges filed with the EEOC under H.R. 1230.

H.R. 1230 expands liability by allowing mixed-motive claims in cases involving the Age Discrimination in Employment Act, ADEA, and three other statutes. However, when a worker files charges with the EEOC, the worker will likely not indicate whether the charge involves mixed motives, nor is the EEOC likely to be able to classify charges as mixed motive or not. The EEOC, therefore, will be unable to determine whether charges have been filed pursuant to H.R. 1230.

I am very doubtful the EEOC would be able to comply with this amendment's requirements, and Congress should not include an unrealistic mandate on an agency.

As I said before, we don't need to be doing studies after the bill is passed, Mr. Chair. We need to know whether this bill is necessary. We don't think it is necessary, and doing the studies afterward seems a little ridiculous.

The amendment does nothing to address the fundamental flaws in H.R. 1230 and places an unrealistic mandate on the EEOC. Therefore, I urge my colleagues to oppose it.

Since the gentleman has yielded back, I believe, I will yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentleman from Maryland (Mr. BROWN).

The amendment was agreed to.

AMENDMENT NO. 5 OFFERED BY MS. TLAIB

The CHAIR. It is now in order to consider amendment No. 5 printed in House Report 116–377.

Ms. TLAIB. Mr. Chair, I have an amendment at the desk.

The CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

At the end, add the following:

SEC. 5. REPORT BY THE UNITED STATES COMMISSION ON CIVIL RIGHTS.

(a) REPORT.—With funds appropriated in advance to carry out this section, and consistent with the operational and procedural requirements of the United States Commission on Civil Rights, the Commission shall submit to the appropriate committees of the Congress a report containing an analysis of the status of Federal mixed motive age discrimination in employment claims made against Federal agencies, including—

(1) the number of such claims, specified by the Federal agency against which such claims are made; and

(2) other related information the Commission determines to be appropriate.

(b) SUBMISSION OF REPORT.—The report required by subsection (a) shall be submitted not later that 5 years after the date of the enactment of this Act.

The CHAIR. Pursuant to House Resolution 790, the gentlewoman from Michigan (Ms. TLAIB) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Michigan.

Ms. TLAIB. Mr. Chair, I would like to begin by thanking our chairman, Chairman BOBBY SCOTT, and his staff for working with me on this and for their bipartisan leadership on this bill. I appreciate the chairman's help in allowing me to better serve what I lovingly call Michigan's 13th District strong.

Before us is an amendment that requires, within 5 years, the United States Commission on Civil Rights to submit a comprehensive analysis and review of Federal mixed-motive age discrimination in employment claims made against Federal agencies.

Unfortunately, the Supreme Court has made it harder for older workers to prove that they were discriminated against at their job based on age.

This bill will strengthen protections against age discrimination for our residents by placing greater accountability on the hiring practices of large corporations rather than placing it on the shoulders of our older working-class residents.

We know that when an older resident and worker loses their job, they are far more likely to join the ranks of the long-term unemployed community and that their age plays a significant role in this. I heard countless stories back in my district of older residents who had significant struggles landing other jobs after they were laid off during the auto bailout in Michigan.

One of my residents, Lena, was laid off at 55 years old after 22 years with Ford Motor Company. She tried for 6 months to get a similar position, to no avail. She told me: ''When they see 22 years with a company, they know how old you are.'' Since then, she had to relocate her family after her 9 months of severance pay ran out.

Passing this bill means that we will be safeguarding our older Federal workers from having to go through similar challenges.

My amendment is a protection measure that requires the U.S. Commission on Civil Rights to submit an analysis

of mixed-motive age discrimination in Federal employment claims. We have to fight back against these motivating factors that have nothing to do with a person's experience or ability.

It is important that when we pass legislation, we ensure that it has public data on the outcome in order to be transparent and accountable to the residents who we serve back home.

For the sake of our residents and to protect our older workforce, Congress must ensure that age is not again a motivating factor in employment decisions.

Mr. Chair, I urge my colleagues to support this amendment, and I reserve the balance of my time.

Ms. FOXX of North Carolina. Mr. Chair, I claim time in opposition to the amendment.

The CHAIR. The gentlewoman is recognized for 5 minutes.

Ms. FOXX of North Carolina. Mr. Chair, I yield myself such time as I may consume.

Mr. Chairman, as I understand it, this amendment requires the U.S. Commission on Civil Rights to produce a report on mixed-motive claims in age discrimination cases filed by Federal employees against their Federal agency employers. I have several concerns with this amendment.

First, the U.S. Commission on Civil Rights is a small agency that is not well equipped to undertake such a study. This amendment requires ''funds appropriated in advance,'' otherwise known as taxpayer dollars, to be spent to do the report, which means the agency doesn't have the resources to take on this mandate.

Second, while H.R. 1230 was only referred to the Committee on Education and Labor, this amendment involves the interests of two other committees that are not represented in this debate. The Judiciary Committee has jurisdiction over the U.S. Commission on Civil Rights, which is tasked with doing the report directed by the amendment, and the Oversight and Reform Committee has jurisdiction over the employment relationships between Federal agencies and their employees.

Third, this report will be submitted to Congress no later than 5 years after the bill goes into effect. I am not sure what good a report published 5 years from now will do for us who are being asked to vote on H.R. 1230 now.

Fourth, perhaps most importantly, there is a lack of evidence that a report is needed on age discrimination claims in Federal agencies. The Committee on Education and Labor received no evidence on this matter.

With H.R. 1230, Democrats have chosen to further their pro-trial lawyer agenda with legislation that masquerades as a protection for workers.

H.R. 1230 is yet another one-size-fits-all approach that fails to address the purported problem, neglects the experience of workers and employers, and disregards decades of Supreme Court precedent.

This amendment does nothing to address the fundamental flaws in H.R. 1230, and it directs a small agency to conduct a study without a clear basis of the need for that study.

Mr. Chair, I urge my colleagues to oppose the amendment, and I reserve the balance of my time.

Ms. TLAIB. Mr. Chairman, I think it is really important to note that this came about because the last report that we could find on age discrimination in this particular area is from the 1970s. It is about time that we bring this forward.

We could not find anything anywhere that specifically looked at this particular Federal mixed-motive age discrimination kind of study, again, since the 1970s.

The burden of proof is just too high on Federal employees. We need to go back and be very centered around making sure that there is equal access to proving a discrimination case of this type.

Mr. Chair, I urge my colleagues to support this amendment, and I yield back the balance of my time.

Ms. FOXX of North Carolina. Mr. Chair, this is a solution in search of a problem.

We all know that it is almost impossible to fire a Federal employee. In fact, I think the number is less than 1 percent who are fired each year.

Maybe the reason we haven't had an updated report is because there hasn't been the need for an updated report. I think, again, this is a totally unnecessary amendment, and I am totally opposed to it.

Mr. Chair, I yield back the balance of my time.

The CHAIR. The question is on the amendment offered by the gentlewoman from Michigan (Ms. TLAIB).

The amendment was agreed to.

Mr. SCOTT of Virginia. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. TLAIB) having assumed the chair, Mr. CUELLAR, Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1230) to amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 3 o'clock and 11 minutes p.m.), the House stood in recess.

□ 1602

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. BROWN of Maryland) at 4 o'clock and 2 minutes p.m.

PROTECTING OLDER WORKERS AGAINST DISCRIMINATION ACT

The SPEAKER pro tempore. Pursuant to House Resolution 790 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the state of the Union for the further consideration of the bill, H.R. 1230.

Will the gentleman from Texas (Mr. CUELLAR) kindly resume the chair.

□ 1602

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H.R. 1230) to amend the Age Discrimination in Employment Act of 1967 and other laws to clarify appropriate standards for Federal employment discrimination and retaliation claims, and for other purposes, with Mr. CUELLAR in the chair.

The Clerk read the title of the bill.

The CHAIR. When the Committee of the Whole rose earlier today, amendment No. 5 printed in House Report 116–377 offered by the gentlewoman from Michigan (Ms. TLAIB) had been disposed of.

AMENDMENT NO. 3 OFFERED BY MR. ALLEN

The CHAIR. Pursuant to clause 6 of rule XVIII, the unfinished business is the demand for a recorded vote on amendment No. 3 printed in House Report 116–790 offered by the gentleman from Georgia (Mr. ALLEN) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIR. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 163, noes 257, not voting 15, as follows:

[Roll No. 19]

AYES—163

Abraham	Bost	Conaway
Aderholt	Brady	Cook
Allen	Brooks (AL)	Crenshaw
Amodei	Buck	Curtis
Armstrong	Bucshon	DesJarlais
Arrington	Budd	Diaz-Balart
Babin	Burchett	Duncan
Bacon	Burgess	Dunn
Baird	Carter (GA)	Emmer
Balderson	Carter (TX)	Estes
Banks	Chabot	Ferguson
Barr	Cheney	Fleischmann
Bergman	Cline	Flores
Biggs	Cloud	Fortenberry
Bilirakis	Cole	Foxx (NC)
Bishop (NC)	Collins (GA)	Fulcher
Bishop (UT)	Comer	Gaetz